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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,080	12/18/2000	Michael Thomas Lee	P-8788	4542

27581 7590 07/27/2004

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EXAMINER

BRADFORD, RODERICK D

ART UNIT PAPER NUMBER

3762

DATE MAILED: 07/27/2004

21

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,080

Applicant(s)

LEE ET AL. *cn*

Examiner

Roderick Bradford

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14, 15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14, 15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-9, 12, 14 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Bardy et al. U.S. Patent No. 6,312,378.

Referring to claims 1 and 14 Bardy discloses a computerized method of controlling one or more implantable medical devices comprising:

- Transmitting via a network communication link a set of historical physiologic data previously gathered from at least one of implantable medical devices to a centralized computing resource external to the patient (column 4, lines 9-12)
- Analyzing the set of historical physiological data so transmitted according to a suitable physiological model of long term disease progression and generating a set of results of the analysis from the set of historical physiological data (column 8, lines 41-59)

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- Determining a set of instructions comprising an implantable medical device therapy regimen based at least in part on the set of results from the analysis of the set of historical data (column 9, lines 7-10)
- Transmitting via the network communication link or a separate network communication link the set of instructions to the at least one of the implantable medical devices for execution by the at least one or more implantable medical devices in accordance with firmware or software implanted executed routine (column 7, lines 33-59).

Referring to claim 2, wherein the network communication link or the separate network communication link comprises a radio frequency, a hard-wired, an infrared-band, or other type of a wireless communication link (column 8, line 60 – column 9, line 6).

Referring to claim 3, wherein the network communication link or the separate network communication link comprises a hybrid link (column 16, lines 1-6).

Referring to claim 4, wherein the hybrid link comprises a radio frequency link from said implantable medical device to a routing instrument, and a secondary network link from the routing device to the central computing resource (Figs 1 & 2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy et al. U.S. Patent No. 6,312,378 in view of Varrichio et al. U.S. Patent No. 5,186,170.

Referring to claims 10 and 19, Bardy fails to teach a network communication link that is asynchronous. However, Varrichio teaches a network communication link that is asynchronous (column 1, line 60) as a means to allow communication of data one way at a time.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the teachings of Bardy with a network communication link that is asynchronous, as taught by Varrichio, as a means to allow communication of data one way at a time.

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6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy et al. U.S. Patent No. 6,312,378 in view of Deschamp et al. U.S. Patent No. 5,899,931.

Referring to claim 11, Bardy fails to teach a network communication link that is synchronous. However, Deschamp teaches a network communication link that is synchronous (column 2, lines 30-32) as a means to allow communication of data simultaneously.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the teachings of Bardy with a network communication link that is synchronous, as taught by Deschamp, as a means to allow communication of data simultaneously.

7. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy et al. U.S. Patent No. 6,312,378.

Referring to claims 17 and 18, Bardy discloses the claimed invention except for multi-processor workstation and networked cluster of computers. It would have been an obvious matter of design choice to use a multi-processor and networked cluster of computers, since the applicant has not disclosed that a multi-processor or networked cluster of computers solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any computer, such as the database as taught by Bardy for processing and analyzing data.

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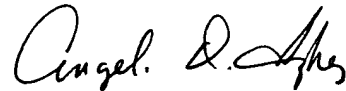
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roderick Bradford whose telephone number is (703) 305-3287. The examiner can normally be reached on Monday - Friday 7 a.m. - 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


R.B.



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